

FRENCH NUCLEAR TESTS IN THE PACIFIC – NEW ZEALAND REQUEST FOR “AN EXAMINATION OF THE SITUATION” - A RETREAT INTO JUDICIAL FORMALISM BY THE INTERNATIONAL COURT OF JUSTICE?

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1. BACKGROUND

On 21st August 1995 New Zealand filed in the International Court of Justice, (ICJ), a “Request for an Examination of the Situation” in accordance with paragraph 63 of the judgment of the ICJ in the *Nuclear Test Case* between New Zealand and France delivered in 1974. The request indicated that it “arises out of a proposed action announced by France, which will, if carried out, affect the basis of the judgment rendered by the Court on December 20, 1974, in the *Nuclear Test Case (New Zealand v. France)* and that “the immediate circumstance giving rise to the present phase of the case is a decision announced by France in a media statement of June 13, 1995” by the President of France that “*FRANCE WOULD CONDUCT A FINAL SERIES OF EIGHT NUCLEAR WEAPON TESTS IN THE SOUTH PACIFIC STARTING IN SEPTEMBER 1995.*”

The 1974 judgment of the ICJ stated, in Paragraph 63 : “Once the Court has found that a state has entered into a commitment concerning its future conduct it is not the Court’s function to contemplate that it will not comply with it. However, the Court observes that *if the basis of this judgment were to be affected*, the Applicant could request *an examination of the situation* in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the *General Act for the Pacific Settlement of International Disputes*, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle to the presentation of such a request.”¹

Thus New Zealand sought to re-invoke the jurisdiction of the ICJ by requesting “an examination of the situation” in terms of the 1974 judgment. The possibility of New Zealand filing fresh proceedings before the Court was precluded by the fact that France had, subsequent to the filing of the New Zealand request in 1974, denounced the *General Act for the Pacific Settlement of International Disputes* which conferred jurisdiction on the Court.²

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